

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

March 14, 2008

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.:07od-135

OAHU

Grant of Term, Non-Exclusive Easement to Stanley & Donna
Koki for Seawall and Filled Land Purposes, Kaneohe,
Koolaupoko, Oahu, Tax Map Key (1) 4-5-104:021 seaward.

APPLICANT:

Stanley & Donna Koki, husband and wife, Tenants by the Entirety
whose mailing address is 45-496 Malio Place, Kaneohe, Hawaii
96744.

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government land located seaward of Kaneohe,
Koolaupoko, Oahu, identified by Tax Map Key: (1) 4-5-104:021
seaward, as shown on the attached map labeled Exhibit A.

AREA:

388 square feet, more or less.

ZONING:

State Land Use District: Conservation

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State
Constitution: YES _____ NO X

CURRENT USE STATUS:

Unencumbered with encroachments.

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace and remove existing seawall over, under and across State-owned land.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent or staff appraisal establishing fair market rent, subject to review and approval by the Chairperson.

EASEMENT TERM:

Fifty-five (55) years.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

On an aerial photo dated 1949, the same configuration of the shoreline was shown. Staff determined it appeared to be built before 1974, prior to the enactment of the EIS law and this action is therefore exempt from Chapter 343.

DCCA VERIFICATION:

Not applicable. The Applicant as a landowner is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine one-time payment; and
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.

REMARKS:

The applicant bought the property and intends to obtain a building permit to renovate the improvements on the property. It triggers a shoreline certification process. During review of the survey map of the subject property, a portion of the seawall (388 sq. ft.) is found encroaching on State land. A copy of the survey map is attached as Exhibit B. The applicant is willing to resolve the encroachment by obtaining an easement from the Board.

Office of Conservation and Coastal Lands (OCCL) considers the subject encroachment to be nonconforming structures. Public access to the shoreline is poor, and the area is not suited for

beach recreation. Public access would not be enhanced by removal of the encroachment, and the area is not suitable for shoreline access. OCCL has no objections to a disposition request being processed. A copy of OCCL response is attached as Exhibit C.

Department of Parks and Recreation, Department of Planning and Permitting, Department of Hawaiian Home Lands, Board of Water Supply, Commission on Water Resources Management, Division of Aquatic Resources have no objections/no comments on the subject request. Office of Hawaiian Affairs requests the disposition be made at fair market value. It is the policy that the easement will be disposed at fair market value by an appraisal.

Pursuant to the Board's action of June 28, 2002, under agenda item D-17 which established criteria for imposing fines for encroachments, staff is recommending a fine of \$500 as the subject encroachment is over 100 square feet.

Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

There are no other pertinent issues or concerns. Staff has no objections to the request.

RECOMMENDATION: That the Board:

1. Impose a \$500 fine for illegal encroachment, under Section 171-6(12).
2. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (1)4-5-104:021, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term, non-exclusive easement to Stanley & Donna Koki covering the subject area for seawall and filled land purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current term shoreline encroachment easement document form, as may be amended from time to time;
 - B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (1) 4-5-104:021, provided however: (1) it is

specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;

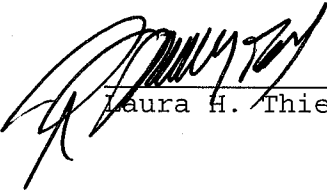
- C. Review and approval by the Department of the Attorney General; and
- D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- E. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement.

Respectfully Submitted,



Barry Cheung
District Land Agent

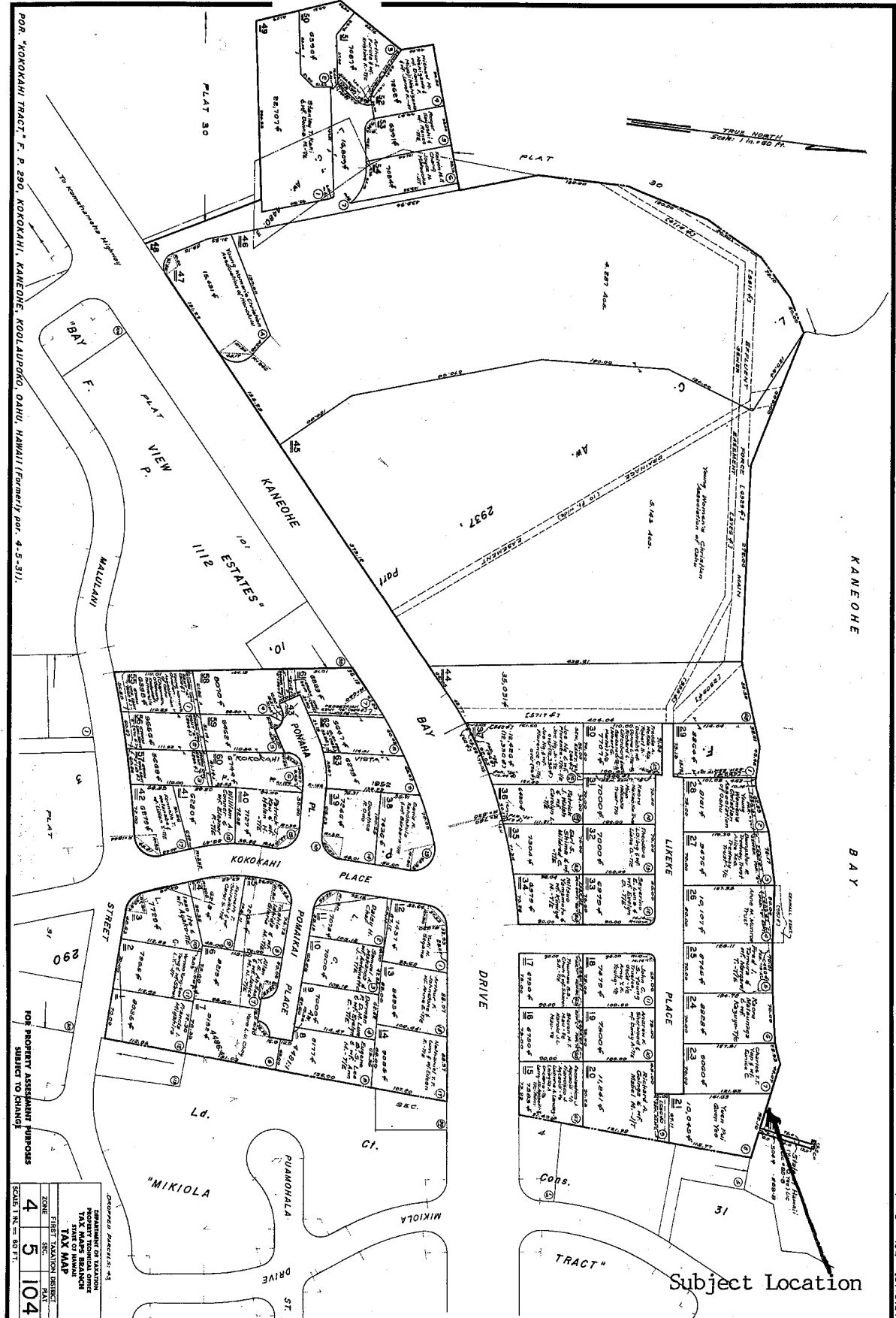
APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson



DWG. NO. 2221 DATE: May 16, 1978 BY: L.T.L.S. SOURCE: F.P. 230 & T.M.

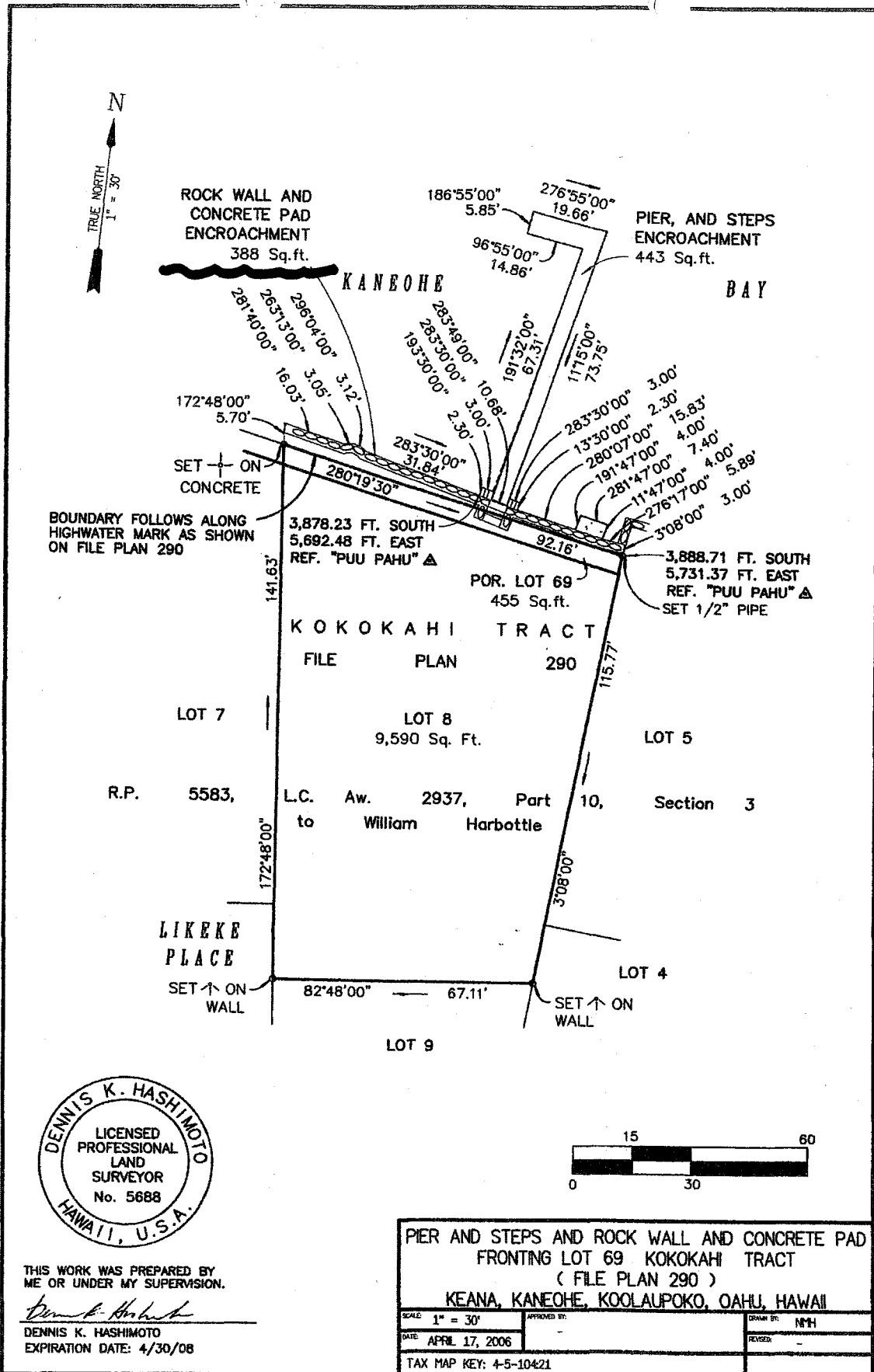


FOR PROPERTY ASSIGNMENT PURPOSES
SUBJECT TO CHANGE

PROPERTY TAX MAP BRANCH			
TAX MAP BRANCH			
TAX MAP			
FIRST TAXATION DISTRICT			
4	5	104	
ZONE	SEC.	PAT.	

SCALE: 1" = 50 FT.

EXHIBIT "A"



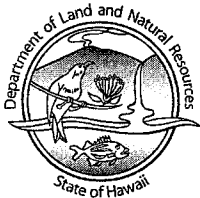
FIELD BOOK 428:71

DJNS SURVEYING & MAPPING, INC.
P.O. BOX 25636, Honolulu, Hawaii 96825

JOB #06603

EXHIBIT "B"

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

Office of Conservation and Coastal Lands
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

SEP 11 2007

File Number Encroachment: OA 88-02

MEMORANDUM:

TO: Barry Cheung, Land Agent
Land Division

FROM: Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

RECEIVED
LAND DIVISION
SEP 11 P 3 49
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

SUBJECT: Request to Resolve State Land Encroachment at Kaneohe Bay, Oahu (TMK: 4-5-104:021) Koki

This is in response to your August 31, 2007 request for our review of a state land encroachment seaward of private property at Kaneohe Bay, Island of Oahu.

According to information and maps contained with your request, there appears to be approximately 388 square feet of encroachment (wall/fill).

OCCL staff reviewed an aerial photograph of the site submitted with the encroachment questionnaire. This photograph shows a seawall that appears to follow the same alignment of the seawall depicted in recent site photographs. Based on these photographs, this wall was likely constructed prior to October 1, 1964. Thus, OCCL would consider these improvements to be nonconforming structures.

Based on the evidence submitted with this request, the DLNR does not consider the encroachment a Conservation District violation and will not be asking for an after-the-fact Conservation District Use Application to cure this matter.

The Board of Land and Natural Resource (BLNR) recently established a policy to allow the disposition of shoreline encroachments by either removal or issuance of an easement. In carrying-out this policy, the Department established criteria to guide decision-making over specific cases. The criteria are as follows:

1. Protect/preserve/enhance public shoreline access;
2. Protect/preserve/enhance public beach areas;
3. Protect adjacent properties;
4. Protect property and important facilities/structures from erosion damages; and
5. Apply "no tolerance" policy for recent or new unauthorized shoreline structures

EXHIBIT "C"

In addition, the Department developed a "Shoreline Encroachment Information Sheet" that is intended to provide the State with additional information to guide the Department's decisions on the disposition of shoreline encroachments. This form has been completed and submitted.

Surrounding Land Uses:

The surrounding uses are residential in nature.

Beach Resources:

The tidal area is a mud flat.

Public Access:

Public access to the shoreline is poor. The area is not suited to beach recreation. However, the waters offshore are popular for boating recreation.

Effect of Removing the Encroachment on:

Beach Resources: The removal of the encroachment could have a negative impact on coastal waters, if done improperly. Removal of the wall without immediate placement of erosion control measures could result in sedimentation of state waters.

Public Access: OCCL staff has determined that public access would not be enhanced by removal of the encroachment. The area is not suitable for shoreline access. Boating and fishing would not be affected.

Affect on Adjacent Properties: It is not know what effect removal of this encroachment would have on the surrounding parcels.

Upon review and careful consideration of the information gathered on this case, staff has determined that allowing the encroachment to remain through the issuance of an easement or other disposition would have no adverse impacts on natural resources, including beach resources and public access. Therefore, the OCCL has no objections to a disposition request being processed. Pursuant to Chapter 171, the landowner is required to obtain a land disposition for the use of public lands, and may be subject to a \$500 fine for the encroachment.

We hope this letter helps resolve some of the outstanding issues regarding the subject property. Please feel free to the Office of Conservation and Coastal Lands at 587-0377, should you have any questions.

Cc: Oahu Board Member
Chairperson's Office
City and County of Honolulu
Department of Planning and Permitting